



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

INVESTIGATION REPORT

INVESTIGATION I96-064M

A POLICE SERVICES BOARD

November 14, 1996



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

INTRODUCTION

Background of the Complaint

This investigation was initiated as a result of a complaint concerning a named police services board (the Police) from a lawyer on behalf of his two clients (the complainants).

The complainants were the subject of criminal charges and were defendants in a civil suit relating to the same incident that had led to the criminal charges. The complaint was that a Police officer had disclosed to the lawyer for the plaintiff in the lawsuit, a written statement by one of the complainants and a videotaped statement by the other.

The complainants' lawyer stated that although the Police officer was a witness under a summons to produce documents at the civil trial, the disclosure was made outside the discovery process and did not take place at the trial since the trial had not yet occurred when the disclosure took place. The complainants' lawyer believed that the disclosure was not in compliance with the Municipal Freedom of Information and Protection of Privacy Act (the Act)

Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Was the information in question "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did section 51(1) of the Act apply? If not,
- (C) Did the Police disclose the personal information in compliance with section 32 of the Act?

RESULTS OF THE INVESTIGATION

Issue A: Was the information in question "personal information", as defined in section 2(1) of the Act?

Section 2(1) of the Act states in part, that "personal information" means recorded information about an identifiable individual, including,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,

...

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The information in question was contained in the complainants' witness statements, one written, the other videotaped. The statements identified the complainants and other individuals. They included the complainants' addresses, and their accounts of their involvement in the incident that had led to the criminal charges (and the lawsuit).

In our view, the information in the witness statements met the requirements of paragraphs (d), (e), and (h) of the definition of "personal information" in section 2(1) of the Act.

Conclusion: The information in question was both the complainants' and other individuals' "personal information", as defined in section 2(1) of the Act.

Issue B: Did section 51(1) of the Act apply?

Section 51(1) of the Act states that:

This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

As previously stated, although the Police officer who made the disclosure had been under summons to produce documents at the civil trial, it appears that his disclosure was made outside the discovery process and did not take place at the trial since it was adjourned to a date after the disclosure had taken place. There was also no basis for concluding that the disclosure had occurred within the criminal litigation process.

In our view, since the disclosure was not part of a discovery and did not occur under the control and supervision of a court, it was outside the litigation process, and therefore, the personal information, in this context, was not "available by law to a party to litigation" within the meaning of section 51(1) of the Act.

Conclusion: Section 51(1) of the Act did not apply.

Issue C: Did the Police disclose the personal information in compliance with section 32 of the Act?

Under the Act, an institution shall not disclose personal information except in the specific circumstances outlined in sections 32(a) to (l) of the Act. (Full text is given in Appendix A.)

We asked the Police to provide us with the section of the Act that they had relied on for their disclosure. In response, the Police stated that they had disclosed the complainants' personal information contained in the two witness statements on advice received from a Crown Counsel of the Ministry of the Attorney General. The Police, however, did not elaborate on what advice had been given but referred us to the Crown Counsel. He confirmed that he had provided advice to the Police and stated that in his view, the disclosure had been in compliance with "court procedures".

We have examined the provisions of section 32 of the Act in light of the information available to us. It is our view that in the circumstances of this case, none were applicable to the Police's disclosure of the complainants' personal information.

Conclusion: The Police did not disclose the complainants' personal information in compliance with section 32 of the Act.

SUMMARY OF CONCLUSIONS

- The information in question was both the complainants' and other individuals' "personal information", as defined in section 2(1) of the Act.
- Section 51(1) of the Act did not apply.
- The Police did not disclose the complainants' personal information in compliance with section 32 of the Act.

RECOMMENDATION

In our draft report, we recommended that the Police take steps to ensure that personal information is disclosed only in compliance with the provisions of the Act.

In response, the Police provided us with a copy of its "directive" on the procedures for the "Release of Information from Police Service Files" that is distributed to all its members. In addition, the Police informed us that the Police officer involved has been "made aware of the situation and the appropriate avenue to follow in future." It is our view, therefore, that the recommendation has been satisfactorily implemented.

Original Signed By: _____
Susan Anthistle
Compliance Review Officer

November 14, 1996
Date

APPENDIX A

32. An institution shall not disclose personal information in its custody or under its control except,
- (a) in accordance with Part I;
 - (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
 - (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
 - (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
 - (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or treaty;
 - (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;
 - (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
 - (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
 - (j) to the Minister
 - (k) to the Information and Privacy Commissioner;
 - (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.~